

Professor Chandler was quoted in the Houston Chronicle's MedBlog concerning the first ever constitutional challenge to the 1984 **National Organ Transplant Act**.

## **Lawsuit seeks to let donors sell their bone marrow**

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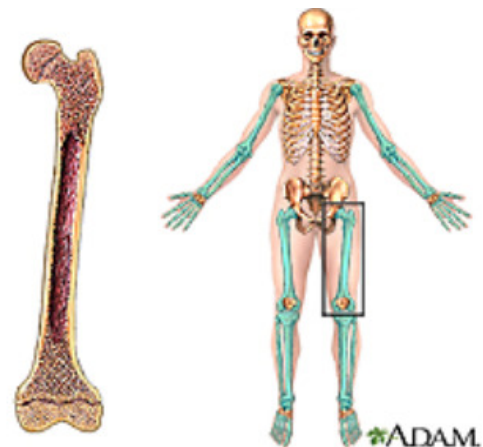
Given the potential for exploitation, coercion and all kinds of unseemly considerations, you can probably understand the thinking behind the federal prohibition against selling or buying human organs. But how about bone marrow? Should the law really apply to it too?

A libertarian law firm in Washington D.C. has filed [a lawsuit challenging the law](#), arguing bone marrow is different because it's self-renewing. It says common sense suggests that modest incentives would attract badly needed donors without corrupting the system.

"Every year, tens of thousands of Americans - many of whom are just children - learn they have a deadly blood disease such as leukemia," says the Institute for Justice [complaint](#). "Often, their only hope is a bone marrow transplant from a stranger, but there is a desperate shortage of unrelated marrow donors, particularly for minorities."

The suit contends that **bone marrow**, the spongy, fluid-filled tissue inside bones that produces new blood cells, belongs in the same class as plasma, sperm or eggs, all of which legally can be sold, rather than that of kidneys, hearts and livers, which cannot.

The lawsuit marks the first ever constitutional challenge to the 1984 **National Organ Transplant Act**, considered the cornerstone of the federal organ transplantation



National Institutes of Health  
The long bone, a good place from which to extract bone marrow.

system. It makes any transaction involving body parts a felony punishable by up to five years in prison.

The law is widely supported by bioethicists, though some call for debate, arguing that relying on altruism alone isn't sufficient and that a system that pays donors could be regulated. University of Houston health law professor **Seth Chandler** says the lawsuit's best hope isn't so much in the courts as to provoke debate or even legislative change. He noted there's a difference between laws that aren't smart and laws that are unconstitutional and said the argument that a fundamental right is being abridged is unlikely to succeed.

Among the suit's six plaintiffs is Akiim DeShay of Irving, Texas, a black leukemia survivor who received a bone marrow transplant from his sister in 2004 but still suffers from persistent medical complications and nearly died in February. He runs a **Web site** created to raise awareness about the need for African-Americans to join **the bone marrow registry**. Currently, only 25 percent of blacks in need of an unrelated donor match find one.

There are about 7 million registered potential bone marrow donors in the United States, but because matching a recipient to donor is so difficult, 1,000 Americans die every year waiting for a match.